

BIENERT, MILLER & KATZMAN

A Professional Law Corporation

March 7, 2018

VIA ECF

The Honorable P. Kevin Castel
United States District Court
Southern District of New York
500 Pearl Street
New York, NY, 10007-1312

Sentencing is set for May 1, 2018 at 11:00 a.m.

SO ORDERED.

Dated: 3/9/2018



P. Kevin Castel
United States District Judge

Re: *United States v. Bergstein*, Case No. 16-cr-746-PKC-1

Dear Judge Castel:

We write on behalf of Defendant David Bergstein to request that the Court advance Mr. Bergstein's sentencing date from the currently scheduled date of June 8, 2018, to May 1, 2018, or as soon thereafter as is convenient to the Court.

On March 1, 2018, the jury returned its verdict, finding Mr. Bergstein guilty on Counts One through Seven of the Indictment. At that time, the Court remanded Mr. Bergstein into custody pending sentencing. The Court scheduled Mr. Bergstein's sentencing date for June 8, 2018. Mr. Bergstein's sentencing date should be advanced for several reasons.

First, the more than three-month gap between the return of the jury's verdict and the current sentencing date is more time than is necessary. The date proposed by the defense, May 1, 2018, allows sufficient time for the probation office to conduct its presentence investigation and submit its presentence report, and allows both the government and the defense sufficient time to submit their respective responses to the report and submit their positions regarding sentencing to the Court.

Second, Mr. Bergstein is being held in custody at the Metropolitan Correctional Center ("MCC") in New York pending sentencing. Mr. Bergstein has several medical conditions requiring specialized care, which he has traditionally received from his physicians in California. In particular, one such condition impacts Mr. Bergstein's ability to breathe properly, for which he is prescribed two different medications. Since arriving in MCC, Mr. Bergstein has had difficulty receiving these medications. Mr. Bergstein has the right to receive adequate medical treatment, and his permanent designation will most likely be more adequately equipped than MCC to ensure he receives the treatment he needs.

Third, as the Court knows, Mr. Bergstein's home and family are located in Southern California. Specifically, Mr. Bergstein's wife and two young sons live in the Los Angeles area. Mr. Bergstein's top priority is his family. While the defense is cognizant of the fact that the Court does not ultimately determine where Mr. Bergstein will serve his sentence, Mr. Bergstein is hopeful that upon receiving his sentence he will be designated in a location more geographically convenient to his family. In the event Mr. Bergstein is not designated near his family, he and his

To: Honorable P. Kevin Castel
Re: *USA v. Bergstein et al*
March 7, 2018
Page | 2

BIENERT, MILLER & KATZMAN
A Professional Law Corporation

family will need to know as soon as possible so they can begin planning and taking the steps necessary to plan for the future while Mr. Bergstein serves his sentence.

Finally, the MCC facility houses inmates of all security levels. Mr. Bergstein was convicted of non-violent, financial crimes. Presumably, the facility in which Mr. Bergstein serves his sentence will be more appropriately structured for similarly situated inmates. For this reason, and the reasons set forth above, there is no need to unnecessarily delay Mr. Bergstein's ultimate designation to serve his sentence.

Accordingly, for the foregoing reasons, the defense asks that the Court advance Mr. Bergstein's sentencing date to May 1, 2018.

Respectfully Submitted,

/s/ Thomas H. Bienert, Jr
Thomas H. Bienert, Jr.
BIENERT, MILLER & KATZMAN, PLC

/s/ Andrew L. Fish
Andrew L. Fish
SATERLEE STEPHENS LLP

Counsel to David Bergstein

Counsel to David Bergstein

428305-1